IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 926 OF 2007

The Agricultural Produce Market Committee, Akkalkot. .... Petitioner

Vs.

The State of Maharashtra & Ors. .... Respondents

Mr. S.G. Kudale for Petitioner.
Mr. A.A. Kumbhakoni, Asstt. Adv. General a/w Mrs. M.P. Thakur, AGP for respondents

CORAM : S.B. MHASE, AND
R.S. MOHITE, JJ
DATE : 25TH JUNE, 2007

P.C.

1) Heard Mr. Kudale,learned counsel for the petitioner.

2) This is the petition filed by Agricultural Produce Market Committee, Akkalkot, District Solapur through it's Director Shri. Dhulappa Sanganbasappa Bake challenging the order dtd. 20th December 2006 passed by respondent no. 3, District Deputy Registrar,Co-operative Societies, Solapur bifurcating the said market committee into two market committees as stated in the order. In fact the said Market Committee have already filed two Petitions bearing Writ Petition Nos. 7939 of 2006 and 4694 of 2007 through its Chairman who claims that who has been authorised by the said Market

Committee and therefore when we found that this is a separate petition coming on behalf of the market committee, we called upon the learned Counsel to show the authority in favour of the Director, Shri. Dhulappa Sanganbasappa, but no Resolution of the Market Committee has been brought on record that he is the Director. Therefore, he is not authorised to file the petition. No Resolution has been brought on record to demonstrate that the Market Committee has authorised him to file the Affidavit and, therefore, what we find is that the petition filed on behalf of the Market Committee by one of the Director when the authorisation of whole body is mis-conceived and not tenable. We find that the Director himself is not in a position to challenge the said order. However, the Director in his personal capacity has not shown capacity and there is no petition on his behalf before us. The petitions which have been filed by Market Committee and its Chairman bearing Writ Petitions 7939 of 2006 and 4694 of 2007 have been already disposed of by this Court by passing a separate order today. In fact whenever the legal persons are required to be present before this Court, it is well established principle that there should be a proper authorisation by the Body Corporate. In the absence of proper authorisation, the petition is

mis-conceived and an abuse of the process of law and we deprecate the said practice.

3) Learned Counsel repeatedly tried to submit that action of bifurcation is at the behest of the Minister, and said Minister has been made party to this petition. Not only that but through out the petition, nowhere the name of the Minister has been disclosed, so that this Court can gather as to who is the Minister. When it is well established principle that the petition is based on malafide, the person against whom the malafide is alleged must be made party. Since the person against whom malafides are claimed is not known, the petition is mis-conceived and we refrain to entertain the said petition. Apart from that in the petitions Nos. 7939 of 2006 and 4694 of 2007, Mr. Kumbhakoni, learned Associate Advocate General who appears for the State has categorically made a statement that the order passed on 20th December, 2006 under Section 44 is withdrawn and accepting the said statement, we have passed detail order in those Writ Petitions. In the background of the circumstances, since there is no order subsisting, this petition does not survive. We brought to the notice of the learned counsel that under these circumstances, the petition cannot survive and it

is better that he withdraws the petition. However, the petitioner and the learned counsel both resisted this suggestion and continued to address this Court on a ground of malafides without naming the person and without disclosing the particulars of the malafides except stating that he is a Minister. In fact, when the basic order has been withdrawn, nothing remains to be quashed by this Court on the point of malafides and to allow to withdraw the petition with a liberty to raise the grounds before the appropriate authority. However, for the best reasons known, the petitioner did not select this court and insist for hearing of the petition and passing a separate judgment and order in this matter. This, we feel, is a misuse of process of law and therefore we impose a cost of Rs.10,000/- on the petitioner and reject and dispose of the petition.

4) Learned Counsel at this stage made a request that an order be stayed for a period of 6 weeks. Prayer is rejected.

5) The amount shall be deposited with the Maharashtra State Legal Services Authority within two weeks.

6) Parties to act on authenticated copy of this order.

(R.S. MOHITE, J.) **(S.B. MHASE, J.)**